

*Handwritten:* #400

**GEKP**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FREDERICK ROTH

CIVIL ACTION

Plaintiffs

NO.

**18 1994**

v.

LIBERTY MUTUAL INSURANCE  
COMPANY

**FILED**

Defendants

**MAY 11 2018**

KATE BARKMAN, Clerk  
Dep. Clerk

**TO: CLERK OF COURT OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Defendant, Liberty Mutual Insurance Company, by its attorneys, Marshall, Dennehey, Warner, Coleman & Goggin, hereby files Notice of Removal of this case from the Court of Common Pleas of Philadelphia County, Pennsylvania, where it is now pending, to the United States District Court for the Eastern District of Pennsylvania on the basis of diversity jurisdiction, and in support thereof avers as follows:

1. Plaintiff commenced this action by Complaint filed on April 11, 2018, in the Court of Common Pleas of Philadelphia County, Pennsylvania, docketed as April Term 2018, No. 01410. (A copy of the Complaint is attached hereto and marked as Exhibit "A").
2. The Complaint was served on Defendant on April 20, 2018.
3. The Complaint states that Plaintiff, Frederick Roth, is as adult individual and resident of the Commonwealth of Pennsylvania, residing therein at 249 Richfield Road, Upper Darby, PA 19082. (Exhibit "A", para.1) Therefore, upon information and belief, Plaintiff is a citizen of the Commonwealth of Pennsylvania.

4. Liberty Mutual Insurance Company is a corporation organized and existing under the laws of the State of Massachusetts, with its principal place of business located at 175 Berkeley Street, Boston, Massachusetts 02116.
5. In Count I of the Complaint, Plaintiff alleges claims against Defendant, Liberty Mutual Insurance Company, for bad faith pursuant to 42 Pa.C.S.A. § 8371.
6. In Count II of the Complaint, Plaintiff alleges claims against Defendant, Liberty Mutual Insurance Company, for breach of contract by failure to pay underinsured motorist benefits.
7. Based upon the allegations of Plaintiff's Complaint, the amount in controversy in this action is in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of costs and interest, as Plaintiff has alleged damages in excess of \$50,000.00 for each Count in the Complaint. Plaintiff also alleged bad faith pursuant to 42 Pa.C.S.A. §8371, including punitive damages.
8. As such, the above described civil action is one in which this Honorable Court has jurisdiction pursuant to the provisions of 28 U.S.C. § 1332 based upon the fact that there exists diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00.
9. The present lawsuit is accordingly removable from the state court to this Honorable Court pursuant to 28 U.S.C. §§ 1441 and 1446.
10. This Notice of Removal has been filed within thirty (30) days after receipt by Defendant of the Complaint in accordance with 28 U.S.C. § 1446(b).
11. Copies of all process, pleadings and other Orders which have been received by Defendant in this action are filed herewith.

WHEREFORE, Defendant, Liberty Mutual Insurance Company, respectfully requests that it may affect the removal of this action from the Court of Common Pleas of Philadelphia County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN



By: \_\_\_\_\_  
WILLIAM C. FOSTER, ESQUIRE  
CRISTIN A. CAVANAUGH, ESQUIRE  
PA Attorney ID Nos. 03511/307546  
2000 Market Street, Suite 2300  
Philadelphia, PA 19103  
215-575-2597; 215-575-0856 (fax)  
[wcfoster@mdwgc.com](mailto:wcfoster@mdwgc.com)  
[cacavanaugh@mdwgc.com](mailto:cacavanaugh@mdwgc.com)  
Attorneys for Defendant

5/11/18  
Dated: \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FREDERICK ROTH	:	CIVIL ACTION
	:	
Plaintiffs	:	
	:	
v.	:	NO.
	:	
LIBERTY MUTUAL INSURANCE	:	
COMPANY	:	
Defendants	:	

---

CERTIFICATION

I, Cristin A. Cavanaugh, Esquire, hereby certify that the facts set forth in the foregoing Notice of Removal are true and correct to the best of my knowledge, information and belief.

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN



By: \_\_\_\_\_  
WILLIAM C. FOSTER, ESQUIRE  
CRISTIN A. CAVANAUGH, ESQUIRE  
PA Attorney ID Nos. 03511/307546  
2000 Market Street, Suite 2300  
Philadelphia, PA 19103  
215-575-2597; 215-575-0856 (fax)  
[wcfoster@mdwcg.com](mailto:wcfoster@mdwcg.com)  
[cacavanaugh@mdwcg.com](mailto:cacavanaugh@mdwcg.com)  
Attorneys for Defendant

5/11/18  
Dated: \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FREDERICK ROTH	:	CIVIL ACTION
	:	
Plaintiffs	:	
	:	
v.	:	NO.
	:	
LIBERTY MUTUAL INSURANCE	:	
COMPANY	:	
Defendants	:	


---

CERTIFICATE OF SERVICE

I, Cristin A. Cavanaugh, Esquire, hereby certify that a true and correct copy of the foregoing Notice of Removal was served upon the following party via electronic service, on the below date:

Jay L. Edelstein, Esquire  
Edelstein Law, LLP  
230 S. Broad Street, Suite 900  
Philadelphia, PA 19102  
Attorney for Plaintiff

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

By:   
\_\_\_\_\_  
CRISTIN A. CAVANAUGH, ESQUIRE  
Attorneys for Defendant

5/11/18  
Dated: \_\_\_\_\_

# EXHIBIT A



## Notice of Service of Process

Transmittal Number: 18066734  
Date Processed: 04/20/2018

**Primary Contact:** Bruce Buttaro  
Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston, MA 02116

---

<b>Entity:</b>	Liberty Mutual Insurance Company Entity ID Number 1765547
<b>Entity Served:</b>	Liberty Mutual Insurance Company
<b>Title of Action:</b>	Frederick Roth vs. Liberty Mutual Insurance Company
<b>Document(s) Type:</b>	Notice and Complaint
<b>Nature of Action:</b>	Contract
<b>Court/Agency:</b>	Philadelphia County Court of Common Pleas, Pennsylvania
<b>Case/Reference No:</b>	001410 April 2018
<b>Jurisdiction Served:</b>	Massachusetts
<b>Date Served on CSC:</b>	04/20/2018
<b>Answer or Appearance Due:</b>	20 Days
<b>Originally Served On:</b>	Liberty Mutual on 04/19/2018
<b>How Served:</b>	Client Direct
<b>Sender Information:</b>	Jay L. Edelstein 215-893-9311

---

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**  
251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)

Court of Common Pleas of Philadelphia County  
Trial Division  
**Civil Cover Sheet**

PLAINTIFF'S NAME FRED ROTH		DEFENDANT'S NAME LIBERTY MUTUAL INSURANCE COMPANY	
PLAINTIFF'S ADDRESS 249 RICHFIELD ROAD UPPER DARBY PA 19082		DEFENDANT'S ADDRESS 175 BERKLEY STREET BOSTON MA 02116	
PLAINTIFF'S NAME		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS	
PLAINTIFF'S NAME		DEFENDANT'S NAME	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS	
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 1	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input checked="" type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input checked="" type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:		
CASE TYPE AND CODE 2V - MOTOR VEHICLE ACCIDENT			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		FILED <b>PRO PROTHY</b> APR 11 2018 M. BRYANT	
		IS CASE SUBJECT TO COORDINATION ORDER? YES    NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>FRED ROTH</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY JAY L. EDELSTEIN		ADDRESS 230 S. BROAD ST. SUITE 900 PHILADELPHIA PA 19102	
PHONE NUMBER (215) 893-9311	FAX NUMBER (215) 893-9310		
SUPREME COURT IDENTIFICATION NO. 30227		E-MAIL ADDRESS JEdelstein@edelsteinlaw.com	
SIGNATURE OF FILING ATTORNEY OR PARTY JAY EDELSTEIN		DATE SUBMITTED Wednesday, April 11, 2018, 11:43 am	

FINAL COPY (Approved by the Prothonotary Clerk)



**Our File No.: 121.115**  
**EDELSTEIN LAW, LLP**  
By: Jay L. Edelstein, Esquire  
Identification No. 30227  
230 S. Broad Street, Suite 900  
Philadelphia, PA 19102  
Telephone: (215) 893-9311  
Attorney for Plaintiff, Frederick Roth

This is a Major Non-Jury Matter  
An Assessment of Damages Hearing  
is not required



**FREDERICK ROTH**  
249 Richfield Road  
Upper Darby, PA 19082

**COURT OF COMMON PLEAS**  
**PHILADELPHIA COUNTY**  
**NO.:**

Plaintiff

v.

**LIBERTY MUTUAL INSURANCE**  
**COMPANY**  
175 Berkley Street  
Boston, MA 02116

Defendant

**CIVIL ACTION COMPLAINT**  
**NOTICE TO DEFEND**

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you.

You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

**PHILADELPHIA BAR ASSOCIATION**  
Lawyer Referral & Information Service  
1101 Market Street, 11th Floor  
Philadelphia, PA 19107

**AVISO**

"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

**LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.**

**ASOCIACION DE LICENCIADOS DE FILADELPIA**  
Servicio De Referencia E. Informacion  
1101 Market Street, 11th Floor  
215-238-6300

**Our File No.: 121.115**  
**EDELSTEIN LAW, LLP**  
By: Jay L. Edelstein, Esquire  
Identification No. 30227  
230 S. Broad Street, Suite 900  
Philadelphia, PA 19102  
Telephone: (215) 893-9311  
Attorney for Plaintiff, Frederick Roth

This is a Major Non-Jury Matter  
An Assessment of Damages Hearing  
is not required

**FREDERICK ROTH**  
249 Richfield Road  
Upper Darby, PA 19082

Plaintiff

v.

**LIBERTY MUTUAL INSURANCE  
COMPANY**  
175 Berkley Street  
Boston, MA 02116

Defendant

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
NO.:

AND NOW come the Plaintiff, Frederick Roth, by and through his attorney, Jay L. Edelstein, Esquire, hereby files the within Complaint against Defendant, Liberty Mutual Insurance Company and in support thereof, avers as follows:

**I. PARTIES**

1. Plaintiff, Frederick Roth, (hereinafter "Plaintiff"), is an adult individual and resident of the Commonwealth of Pennsylvania, residing at the above listed address.
2. Defendant, Liberty Mutual Insurance Company (hereinafter "Defendant"), is upon information and belief, an insurance company licensed to transact business in the Commonwealth of Pennsylvania, with a corporate office as listed above.

**II. JURISDICTION AND VENUE**

3. Venue is proper in the Philadelphia County Court of Common Pleas in that Defendant regularly conducts business in Philadelphia County.

### III. FACTS

4. On or about November 23, 2015, Plaintiff was injured when his car was struck in a head-on collision by a vehicle being driven by Nemexi Alvarado.
5. The accident was caused solely by the negligence of the underinsured tortfeasor, Nemexi Alvarado, who was driving under the influence of alcohol at the time of the subject crash.
6. As a result of the foregoing collision, Plaintiff sustained serious injuries, including but not limited to: multiple cervical disc protrusions, facial lacerations resulting in permanent scarring, and other injuries as may be diagnosed by Plaintiff's health care providers.
7. At all material times hereto, the vehicle being operated by Plaintiff was insured with Defendant, under policy number AOS-288-034649-4030 ("policy"). A copy of the pertinent declarations page is attached hereto and incorporated by reference herein as Exhibit "A".
8. At all material times hereto, the aforesaid policy provided Underinsured Motorist Benefits Coverage ("UIM") of \$250,000.00 for each person. See Exhibit "A" page 2.
11. Plaintiff advised Defendant of his intent to pursue an underinsured motorist claim.
12. A settlement of the underlying action was reached with the tortfeasor for \$29,000.00. Plaintiff, in compliance with the terms of the applicable motor vehicle policy, advised Defendant of this settlement and received Defendant's approval of said settlement amount.
13. Plaintiff has provided Defendant with medical records and bills supporting damages and advised that as a result of Plaintiff's injuries, he was entitled to recover UIM benefits.
14. At all material times, Defendant was provided with all necessary medical records and documents to complete a full, fair, and final evaluation of Plaintiff's UIM claim.
21. Defendant has unreasonably and in bad faith deprived their insured of benefits owed to him pursuant to the policy.
22. It is believed and therefore averred that Defendant, has devised a scheme of depriving

insured of benefits and unreasonably delaying payment of benefits, for the purpose of furthering their financial gains and interests.

23. Defendant lacks a reasonable basis for refusing to pay the applicable UIM benefits owed to Plaintiff.

24. Defendant has acted recklessly, willfully, and with deliberate indifference towards Plaintiff, its insured.

**COUNT I- BAD FAITH**  
**FREDERICK ROTH V. LIBERTY MUTUAL**

25. Plaintiff incorporates by reference herein all preceding paragraphs, as if set forth in their entirety.

26. Plaintiff was an "insured" of Defendant, within the meaning of 42 Pa.C.S.A. §8371, which imposes a duty upon an insurance company to act in good faith, including but not limited to, the handling of his underinsured motorist claim.

27. Defendant's duty to act in good faith included, without limitation, the obligation to act with reasonable promptness in evaluating and responding to Plaintiff's claims with reasonable fairness.

28. In view of the foregoing, Defendant acted in bad faith as follows:

- a. failure to properly investigate Plaintiff's claim;
- b. failure to properly consider evidence supplied by Plaintiff and his counsel in support of his claim;
- c. causing Plaintiff to suffer undue hardship as a result of reckless, wanton, and arbitrary claims-handling practices;
- d. willfully neglecting to consider or process evidence in an effort to avoid paying Plaintiff the benefits to which he was legally entitled;
- e. Making unreasonable offers of settlement for Plaintiff's claims;
- f. adopting a company practice of intentionally undervaluing

underinsured motorist claims and delaying paying said claims for an unreasonable period of time;

- g. delaying and refusing to pay Plaintiff's claim, despite having no medical or legal reason not to;
- h. forcing Plaintiff to file suit to recover UIM benefits owing to him;
- i. misrepresenting facts and its evaluation of Plaintiff's claim;
- k. failing to timely respond to correspondence and telephone calls from its insured's representatives;
- l. failing to make payments of undisputed amounts of coverage owed to Plaintiff;
- m. failing to make reasonable and fair offers of settlement of Plaintiff's UIM claim;
- n. making representations that were unreasonable in light of the facts and circumstance surrounding Plaintiff's claims;
- o. making offers of settlements that were unfair and unreasonable in light of the injuries and losses sustained by Plaintiff as a result of the subject accident;
- p. breach of the covenants of good faith and fair dealing;
- q. failure to pay all sums of money owed to Plaintiff;
- r. causing Plaintiff unnecessary and undue hardships;
- s. engaging in unfair settlement negotiations with their insured;
- t. maintaining positions contrary to the policy, facts, and evidence; and,
- u. Committing various violations of the Pennsylvania's Unfair Insurance Practices Act, 40 P.S. §1171.1 et seq. and related regulations including, but not limited to, The Unfair Claim Settlement Practices Regulations, 31 §146.1 et seq.

29. Defendant's actions have been in reckless disregard of Plaintiff's rights, and have been willful, wanton, and outrageous.

**WHEREFORE** Plaintiff, Frederick Roth, respectfully requests this Honorable Court



enter judgment in his favor and against Defendant, Liberty Mutual Insurance Company, in a sum in excess of \$50,000.00, for any and all damages provided under 42 Pa.C.S.A. §8271, including, without limitation, punitive damages, attorney's fees, interest, and cost of suit.

**COUNT II- BREACH OF CONTRACT**  
**FREDERICK ROTH V. LIBERTY MUTUAL**

30. Plaintiff incorporates by reference herein all preceding paragraphs, as if set forth in their entirety.

31. In accordance with his policy of insurance, Plaintiff, Frederick Roth, made a claim for benefits under the subject policy.

32. Upon information and belief, Defendant improperly, unjustifiably, and unconscionably attempted to deny benefits due and/or failed to timely pay benefits due under the policy.

33. Defendant misrepresented and deliberately under-evaluated Plaintiff's UIM claim.

34. Defendant has refused and failed to pay the reasonable value of Plaintiff's UIM claim.

35. Defendant has wrongfully withheld benefits owed to Plaintiff, pursuant to the policy.

36. Defendant did so by knowingly elevating its financial interests above the interests of its insured.

37. As a further consequence of Defendant's breach of the underlying policy, Defendant has been unjustifiably enriched to Plaintiff's detriment.

38. As a further consequence of Defendant's breach of the subject policy, Plaintiff has suffered losses - including, but not limited to, loss of use of benefits payable.

39. Defendant's action's as described above represent a breach of contract.

40. As a result of Defendant's actions, they breached their obligation of good faith and fair dealing.

41. Plaintiff has been damaged in a sum not yet fully determined which may be proven at

trial.

**WHEREFORE** Plaintiff, Frederick Roth, demands judgment against Defendant, Liberty Mutual Insurance Company, in a sum in excess of \$50,000.00 for all damages, including all compensatory, incidental, and consequential damages sustained in an amount not yet fully determined but to be proven at time of trial, together with interest, counsel fees, costs, and punitive damages.

**COUNT III- UNDERINSURED MOTORIST BENEFITS**  
**FREDERICK ROTH v. LIBERTY MUTUAL**

42. Plaintiff incorporates by reference herein all preceding paragraphs, as if set forth in their entirety.

43. Plaintiff suffered injuries and damages as a result of the negligence and carelessness of an underinsured motorist, as that term is defined under Pennsylvania law and under the terms of Plaintiff's insurance policy with Defendant.

44. Plaintiff is entitled to payment of a sum of money to fully and fairly compensate him for his accident-related injuries and damages, consistent with the coverage limits under the terms of his insurance policy with Defendant.

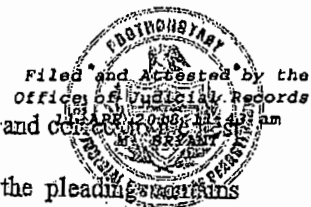
**WHEREFORE**, Plaintiff, Frederick Roth, demands judgment against Defendant, Liberty Mutual Insurance Company, in a sum in excess of \$50,000.00 for all damages including all compensatory, incidental, and consequential damages sustained in an amount not yet fully determined but to be proven at time of trial, together with interest, counsel fees, costs and punitive damages.

**EDELSTEIN LAW, LLP**

BY:                     /s/                      
JAY L. EDELSTEIN, ESQUIRE  
Attorney for Plaintiff, Frederick Roth

Dated: April 11, 2018

VERIFICATION



Plaintiff verifies that the statements made in this pleading are true and correct to the best of plaintiff's knowledge, information and belief. To the extent that the pleading contains averments of law and language of counsel and results of investigation, plaintiff has relied on counsel. Plaintiff understands that false statements herein are made subject to penalties of 18 Pa. §4904, relating to unsworn falsification to authorities.

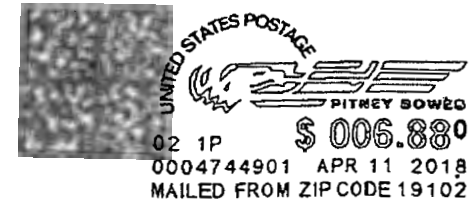
Frederick T. Roth  
FREDERICK ROTH



EDELSTEIN LAW, LLP  
230 S. Broad Street, Suite 900  
Philadelphia, PA 19102



7015 0640 0003 2975 4878



Liberty Mutual Insurance Company  
175 Berkley Street  
Boston, MA 02116